

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

February 25, 2011

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on February 25, 2011. Members present were Chairman Louis Stout, Barry Stumbo, Kathryn Moore, Noel White, James Griggs and Thomas Glover. Member Janice Meyer was absent. Others present were Jim Hume, Mark Newberg and George Dillon, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Law Department. Staff members in attendance were Bill Sallee, Jim Marx and Wanda Howard.

At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

- II. **APPROVAL OF MINUTES** - The Chairman announced that there were no minutes to be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **CV-2011-2: JANICE MUELLER** - appeals for a conditional use permit to construct and occupy a banquet facility (in conjunction with a winery); and variances to reduce the required front yard from 300 feet to 60 feet along the northern property line and to 125 feet along the eastern property line of Royster Road, and from 300 feet to 75 feet along Winchester Road, for construction of a wine tasting room and a private residence in the Agricultural-Rural (A-R) zone, on property located at 4051 Winchester Road. (Council District 12)

The Staff Recommended: Postponement, for the following reasons:

1. Details regarding vehicles exiting the proposed 150-175 space parking lot, and outdoor entertainment associated with planned events are insufficient to determine whether there will be an adverse impact to this neighborhood. Additional information is necessary to ensure that these related activities will not provide a negative impact to the public.
2. The irregular shape of this lot's frontage has led to a question regarding the true dimensional variance requested for the single family dwelling proposed on the property. The submitted site plan appears to place the dwelling on or adjacent to the right-of-way fence along the Royster Road frontage, although a 60' setback has been requested for that structure.
3. A postponement of this request could lead to additional consideration of the questions associated with the threshold issue regarding the ratio of grape arbor/"tasting room" acreage to that devoted to the banquet facility, including its off-street parking area. From the staff's perspective, this is an important consideration in evaluating whether the banquet facility can truly be considered accessory to the agricultural and residential uses otherwise permitted on this 13.25-acre property.

Representation – Ms. Rena Wiseman, attorney, was present on the appellant's behalf to request a two-month postponement.

In response to the Chairman, Mr. Sallee said the staff had no objection to the requested postponement. Neither did the Board. One (unidentified) person present in opposition to the subject appeal said he did not object to the postponement; however, he wanted to submit a letter to staff for the Board's consideration when this case was heard.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Moore, and carried unanimously (Meyer absent) to postpone **CV-2011-2: JANICE MUELLER** until the April 29 meeting.

2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

ABBREVIATED HEARINGS:

- a. **C-2011-10: LEXINGTON COOPERATIVE MINISTRY, INC.** - appeals for a conditional use permit to consider a group of five elderly women as a "functional family" for residential dwelling purposes in a Two-Family Residential (R-2) zone, on property located at 938 Delaware Avenue. (Council District 5)

The Staff Recommends: Approval, for the following reasons:

1. The information supplied by the appellant does indicate that the five elderly residents of this single family dwelling will meet the Zoning Ordinance definition for a "Functional Family." Only women seeking a permanent living arrangement will be eligible to reside at Legacy Home.
2. The proposed use will not meet the definition of a "boarding or lodging house" found in Article 1-11 of the Zoning Ordinance, for the following reasons:
 - i. This group of five elderly and low-income women will be living together in one dwelling, and share a commitment to maintaining an independent living situation.
 - ii. Meals and/or food costs will be shared by residents. Family members will share in the preparation of food and eat together regularly, will contribute to a single household budget, and will work together in maintaining the premises.
 - iii. Individual mailboxes will not be provided to individual residents.
 - iv. Multiple utility meters or connections are not currently present, and are not anticipated.
3. Although the residents of this dwelling are to be age 65 or older, the use proposed does not meet the definition of "elderly housing" contained in Article 1-11 of the Zoning Ordinance.
4. The physical arrangement of the improvements on the subject property, along with the appellant's inherent restrictions for this use, will minimize any potential negative impact of this conditional use upon the surrounding neighborhood.
5. As this is the functional equivalent of a single-family dwelling, all services and infrastructure are adequate and available for this conditional use.

This recommendation of approval is made subject to the following conditions:

1. Occupancy under this "functional family" determination is made specifically for a group of (no more than) five elderly and low-income women living together in a single dwelling unit on the subject property.
2. Women seeking or in need of temporary housing will not be housed or offered residency at this location.
3. All residents of this dwelling unit shall be female, and at least 55 years of age.
4. Family members are to establish a legal domicile at this location, as defined by Kentucky law.
5. No on-site manager or paid caretaker shall reside at this location.
6. Individual mailboxes will not be provided outdoors for individual residents.
7. Members of this "functional family" are to share in maintaining a single household budget.
8. Residents are to prepare food and eat together regularly.
9. Occupants of this dwelling are to share in the work to maintain the premises, as physically able.
10. The property shall be managed by the appellant to ensure that a cooperative living arrangement is maintained, with sharing of daily responsibilities related to meals, household maintenance and oversight with the family budget.
11. This conditional use permit will become null and void should the appellant cease to own the

subject property, or operate or otherwise manage the affairs of this dwelling unit.

Chairman Stout asked whether or not there were objectors to the subject appeal present. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Esther Hurlburt, founder of Lexington Cooperative Ministry, Inc., was present. She indicated that she had reviewed the conditions for approval and agreed to abide by them.

Mr. Marx noted that Building Inspection had received a call this morning regarding this appeal and may have a suggestion about an added condition.

Mr. Hume confirmed that there was a call from a neighbor who was concerned that this would be used as a half-way house or something similar in the future. He suggested an added condition to the effect that the occupants could not be under a court order for rehabilitation, or be in a drug and alcohol program. In response to Mr. Hume, Ms. Hurlburt stated that they were willing to comply with the added condition.

Mr. Griggs asked whether there were any issues related to the configuration of the parking and the driveway to the rear. Mr. Gallimore responded that this is somewhat of a residential situation; and that, for residential parking, Traffic Engineering generally allows backing out across the right-of-way.

Ms. Hurlburt responded that the rear yard was designed so that the occupants of the home can drive out of the driveway rather than backing out; and it was designed specifically that way since elderly women will be living there.

Mr. Sallee directed the Board's attention to the draft of Condition #12 that was shown on the overhead for review, as follows: Occupants shall not be under a court-ordered rehabilitation program, and shall not be in an alcohol-related program.

Since there were no further questions or discussion, the Chairman called for a motion.

Action – A motion was made by Ms. White, seconded by Mr. Glover, and carried unanimously (Meyer absent) to approve **C-2011-10: LEXINGTON COOPERATIVE MINISTRY, INC.** (a conditional use permit to consider a group of five elderly women as a "functional family" for residential dwelling purposes in a Two-Family Residential [R-2] zone on property located at 938 Delaware Avenue) as recommended by staff and subject to the 11 conditions, including the addition of Condition #12 as noted herein.

- b. **C-2011-11: BLUEGRASS TRUST FOR HISTORIC PRESERVATION** - appeals for a conditional use permit to expand an historic house museum (accessible entry/restroom facilities) in a Two-Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 201 N. Mill Street. (Council District 1)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A historic house museum is a well established and valued use at this location, and the small addition (93 square feet) will improve the facilities for accessibility purposes. The addition will be largely hidden from view from adjacent streets, and buffered from adjoining residential property to the north by landscaped gardens on the museum property. Design features of the proposed addition will comply with requirements of the Board of Architectural Review to protect the character of the Gratz Park Historic District.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The addition shall be undertaken in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. All aspects of the construction shall comply with the provisions of a Certificate of Appropriateness issued by the Board of Architectural Review.

Chairman Stout asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation - Ms. Maureen Peters, with Pearson and Peters Architects, was present representing the appellant. She indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Moore, seconded by Mr. Stumbo, and carried unanimously (Meyer absent) to approve **C-2011-11: BLUEGRASS TRUST FOR HISTORIC PRESERVATION** (a conditional use permit to expand an historic house museum [accessible entry/restroom facilities] in a Two-Family Residential/Historic District Overlay [R-2/H-1] zone on property located at 201 N. Mill Street) for the reasons recommended by the staff and subject to the three conditions.

- c. **C-2011-12: MONTESSORI HIGH SCHOOL** - appeals for a conditional use permit to establish a school for academic instruction in a High Density Apartment (R-4) zone, on property located at 472 Rose Street. (Council District 3)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A small high school will be very compatible with the surrounding educational activities, and should prove to be an asset to the UK campus community. Academic opportunities for high school students will be enhanced through close collaboration with UK's College of Education.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The high school shall be established in accordance with the submitted application and site plan, with a maximum enrollment of 48 students.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to opening the school. Occupancy permits shall be updated by the school as necessary to accommodate student enrollment increases.
3. A minimum of one off-street parking space for every five students shall be provided for this use. Compliance with this requirement shall be documented by the appellant as occupancy permits are issued by the Division of Building Inspection.

Chairman Stout asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Jennifer Peterson and Ms. Janet Shedd were present representing the appellant. They both indicated having reviewed the conditions and being in agreement with them.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Meyer absent) to approve **C-2011-12: MONTESSORI HIGH SCHOOL** (a conditional use permit to establish a school for academic instruction in a High Density Apartment [R-4] zone on property located at 472 Rose Street) based on the staff's recommendation and subject to the three conditions.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2011-14: MATT BURTON** - appeals for variances to: 1) reduce the required front yard from 20 feet to 0 feet in order to construct a building addition and deck for a restaurant, and 2) reduce the required number of parking spaces from 24 to 12 in a Neighborhood Business (B-1) zone, on property located at 315 S. Limestone Street. (Council District 3)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare nor alter the character of the general vicinity. Expansion of this restaurant building is not expected to significantly increase parking demands, as this business area of South Limestone is largely supported by pedestrian traffic. The setbacks to be provided by the building addition and open deck are comparable to that provided at adjoining and nearby properties.
- b. The location of the subject property, on a pedestrian-oriented corridor in the midst of numerous other business properties with reduced front yard setbacks along South Limestone, is a special circumstance that contributes to justifying the requested variances.
- c. Strict application of the Zoning Ordinance would prevent the appellant from making a property improvement that is typical of many established businesses in the immediate area.
- d. The circumstances surrounding these requested variances have arisen as a result of the way this area of South Limestone has developed over the years, and are not the result of any actions taken by the appellant.

This recommendation of approval is made subject to the following conditions:

1. The building addition and patio/deck shall be constructed in accordance with the submitted application and site plan as amended on February 16, 2011.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Richard Murphy, attorney, was present representing the Burton family. He told the Board that they were requesting two variances for the property located at 315 South Limestone Street, in the Infill and Redevelopment Area; and that the staff had recommended approval of both. One variance involves reducing the required front yard to accommodate construction of a building addition and deck. The second is a parking variance with respect to reducing the required number of parking spaces by 50%. Mr. Murphy noted that this appeal was filed about a month ago, but they were informed three hours prior to the meeting that there was an issue related to the layout of the parking at the rear of the property. Although the parking-related issue was not resolved this morning, he said he had an alternate proposal to offer to the Board.

Mr. Murphy stated that this building was purchased two months ago by the Burton family; and that it had been vacant for over a year and was the former location of the Pita Pit restaurant. He said the appellant is proposing to open a new restaurant, called the Local Taco, that will serve Southwestern cuisine using locally grown fresh ingredients. He spoke about the City's recent renovation of the South Limestone streetscape, noting that the object was not only to firm up South Limestone as the gateway between downtown and UK, but to encourage private investment and to bolster entertainment options in that area. Therefore, Mr. Murphy felt that the proposed restaurant would be a positive contribution to the area.

With regard to the setback, a photo was shown of the block where the proposed restaurant will be located, which included the Tin Roof restaurant next door, that has the same setback as the appellant is requesting. Other restaurant/bar uses in this vicinity of South Limestone with similar setbacks were noted (i.e., The Paddock, Banana Leaf, Pazzo's, Two Keys, etc.). Also of note was that the proposed restaurant will be located across the street from the Good Samaritan parking lot, as well as Sav's Grill. Mr. Murphy said they were trying to build close to the street, as other uses have, to create a pedestrian-oriented

streetscape, which the Downtown Master Plan called for. He reiterated that they will be constructing an addition to the building, with a slight overhang, and an open-seating deck.

Chairman Stout asked Mr. Murphy about the parking issue. Mr. Murphy said the actual parking variance request is under the Infill Ordinance, which allows them to ask for a 50% reduction in the required parking; and that the restaurant seating, with up to 96 seats to be provided, will be based upon the parking that they have, which is 12 spaces. He emphasized that they were trying to get additional parking in this area, and the final seating will be based on the number of spaces provided. The site plan shown on the overhead depicted the parking layout. Mr. Murphy oriented the Board to the location of the property in question, noting the drive-through window for the former Pita Pit restaurant on the left side of the building adjacent to The Paddock, which has outdoor seating for its patrons. He noted that the drive-through would not be used in conjunction with the proposed restaurant.

With regard to the parking layout, Mr. Murphy stated that the (12) existing spaces at the back of the property are angled, as shown on the site plan; and that the previous uses on this site, probably as far back as 50 or 60 years, had angled parking which did require backing out onto Jersey Street. He said the lot is only 50 feet wide; and due to its narrowness, the only way to have parking on either side was to have the angled parking, as shown. He also said that a different configuration would result in a significant loss of parking spaces on the site, which would have to be found elsewhere.

Mr. Murphy stated that, in a brief discussion with UCG Traffic Engineer Jim Gallimore this morning, he was told that in the past, people would use the drive-through lane, when it was unoccupied, to access South Limestone. He said he didn't think a lot of people would use this as an "escape route" from the parking lot because of the tight squeeze between the building on this property and the building next door; and that they would be changing the layout by eliminating the drive-through lane.

Mr. Murphy respectfully asked the Board to approve the requested variances, with a condition added that the parking layout would have to be worked out to the satisfaction of the Division of Traffic Engineering. He noted that they have secured three off-site parking spaces in the UK lot on Jersey Street, which is within the required 300 feet for the B-1 zone. He reiterated that they were willing to work with Traffic Engineering on an alternative layout to alleviate backing into the street, and to make this a safer situation.

Chairman Stout asked staff if they were aware of the parking-related concern when the recommendation for approval was made. Mr. Marx responded that the staff was not aware of Traffic Engineering's detailed concerns and assumed that the historical conditions would be maintained. He said since so much attention has been placed on this corridor with regard to front yard setbacks, given the Hugh Jass Burgers case, the staff tended to focus mainly on the streetscape along South Limestone rather than the parking situation.

Mr. Murphy noted a letter of support from four neighbors, which was submitted for the record.

Chairman Stout asked for comment from Traffic Engineering. Mr. Gallimore said, when the South Limestone streetscape project was being done, the City made an effort to get rid of more entrances along South Limestone; and if the owner had agreed at that time for the driveway to be eliminated, the City would have restored the curb line, and Traffic Engineering would now be looking at the existing condition of the parking lot. He stated that if it's an existing condition that has been grandfathered, Traffic Engineering normally would not have a say so; however, in this instance, the entrance was recreated as a result of the streetscape project. He said, at one point, he felt people would have an escape route, instead of backing into the street; but now that escape route is gone, which changes the entire picture of how the parking works at that location. Reference was made to a pertinent section of the Zoning Ordinance, shown on the overhead, which precludes approval of the plan as is.

Chairman Stout asked for clarification about retaining the drive-through lane as an escape route. Mr. Gallimore responded that it would be eliminated because of the proposed building addition. Mr. Murphy added that they didn't think it was a good idea to retain the drive-through lane with patrons dining only a few feet away; and that it was a very substandard drive-through situation.

Ms. Moore related her understanding that if the owner had agreed to closing the driveway and having sidewalk installed at the time of the South Limestone renovation, the parking lot would have been grandfathered. Mr. Gallimore reiterated that it would have been an existing condition, but now it's not

because the applicant is changing the circulation due to the proposed building addition. He said he agreed with Mr. Murphy that it was not a very good drive-through or escape route, but it did allow people the option of not backing into the right-of-way. He said the zoning regulations clearly state that that is not to be allowed; and he didn't see how he could approve the parking plan at this time.

With regard to the existing condition of the parking lot, Mr. Griggs asked whether the previous owner was approached about closing it off at the time of the South Limestone renovation. Mr. Gallimore said it was his understanding from the project engineer that the property owners with driveways and parking areas directly off South Limestone were broached about eliminating that condition. He explained that, in all cases, when Traffic Engineering comes upon a project that has existing issues and the parking is not being changed, the property owner is not asked to bring everything up to standard. However, in this instance, where the use and intensity will be increased, the property owner is asked to comply with the proper guidelines. Mr. Gallimore suggested that an option would be to put in 90 degree parking at the rear of the building that has the proper aisle width to enable cars to turn around within the parking lot; however, it would be necessary to provide additional parking off site to meet the minimum parking requirement as the result of a reduction in the number of parking spaces on the property. He also noted a potential conflict with the entrance to the parking lot directly across the street if cars exiting the subject property were allowed to back out into the right-of-way.

A brief discussion between the Board and Mr. Gallimore followed regarding an added condition to the effect that the parking layout would be worked out to the satisfaction and approval of the Division of Traffic Engineering. Mr. Murphy responded that they were in agreement with the condition. He understood that they would need to come up with a plan that works and to determine how many on-site spaces would be lost, as well as the number of additional spaces they would need to lease off site. Mr. Murphy said he was confident that this could be worked out with Traffic Engineering.

Chairman Stout felt that this proposal should not be blocked because of the parking issue the applicant only recently became aware of.

Mr. Griggs asked whether the restaurant would have to have a dumpster, given the size of the property. Mr. Gallimore said this is an issue because the lot is so narrow. He said he had talked to Solid Waste about the waste removal situation; and there was no practical way to service a dumpster with a lot that is only 50 feet wide. He noted that the only dumpsters in this vicinity were at the Tin Roof and Two Keys restaurants, because they have a considerably larger parking lot and generate a higher volume of trash. He said it was Solid Waste's opinion that this establishment, even with the addition, could utilize the "Herbie" and "Rosie" receptacles they currently have.

Mr. Sallee directed the Board's attention to the added condition (#3) shown on the overhead, which was read as follows: "Design of the off-street parking shall be subject to approval by the Division of Traffic Engineering."

At this point, Mr. Murphy clarified that the variance they are requesting is to reduce the required parking by 50% (although the number of spaces is yet to be determined), rather than to reduce the required number of parking spaces from 24 to 12 as shown on the agenda. He added that the restaurant seating ultimately will be based upon the number of parking spaces that they have. Chairman Stout said that issue would have to be worked out with the Division of Traffic Engineering in the event of the Board's approval.

Ms. Boland noted a potential conflict between Condition #1 and the added Condition #3. She suggested amending Condition #1 by adding the following wording: "or as amended by the Division of Traffic Engineering." Ms. Boland said the site plan probably would be amended to reflect whatever parking arrangement is made; and that she wanted to avoid creating a situation where there could be a conflict in the conditions.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Griggs, and carried unanimously (Meyer absent) to approve **V-2011-14: MATT BURTON** (variances to: 1] reduce the required front yard from 20 feet to 0 feet in order to construct a building addition and deck for a restaurant, and 2] reduce the required number of parking spaces by 50% in a Neighborhood Business [B-1] zone on property located at 315 S. Limestone Street) for the reasons set forth by the staff; and subject to the two listed conditions, including the amendment of Condition #1 as stated herein and the addition of Condition #3 as stated herein.

2. **V-2011-15: QX NETWORKING & DESIGN** - appeals for a variance to reduce the required front and side street side yards from 20 feet to 1 foot, in order to construct a commercial building in a Light Industrial (I-1) zone, on property located at 321 Henry Street. (Council District 2)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The front and side street side yards to be provided with the redevelopment will mimic historical conditions, and additional open space will be provided along Henry Street. An existing brick building with many desirable features will be preserved.
- b. The requested yard reductions are reasonable based on the manner that this property is currently developed, with buildings on both Henry Street and King Street extending to within a few inches of the street rights-of-way.
- c. Strict application of the Zoning Ordinance would force the appellant to either construct a new building that matches the footprint and total size of the existing building to be replaced, or build at a 20' setback. Given the overall limitations pertaining to this site, having to pursue either of those options would unreasonably restrict the use of the property. Strict application might also compromise the ability of the appellant to preserve a valued building that is now proposed for a new use.
- d. The circumstances driving the need for a variance are not the result of actions taken by the appellant; but relate to how the property was developed many years ago, long before the appellant purchased the property.

This recommendation of approval is made subject to the following conditions:

1. The redevelopment shall take place in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any demolition or construction activity, and prior to occupancy of the new and preserved buildings.
3. Action of the Board shall be noted on the Final Development Plan for the subject property.

Representation – Mr. Chris Howard, with Carman & Associates, was present on the appellant's behalf. He noted having met earlier with a neighborhood resident to discuss this proposal.

Ms. Barbara Grossman, 321 Blackburn Avenue, was present. She related concern about there being sufficient finances available to complete the proposed building construction project and avoid another big mess like the "pasture" downtown, the former CentrePoint site.

Mr. Griggs commented that the Board was unable to address Ms. Grossman's concern, but rather the issues directly related to the requested variance.

In response to the Chairman, Mr. Howard indicated that they were in agreement with the conditions for approval.

Action – A motion was made by Ms. Moore, seconded by Ms. White, and carried unanimously (Meyer absent) to approve **V-2011-15: QX NETWORKING & DESIGN** (a variance to reduce the required front and side street side yards from 20 feet to 1 foot in order to construct a commercial building in a Light Industrial [I-1] zone on property located at 321 Henry Street) for the reasons recommended by the staff and subject to the three conditions recommended by the staff.

D. **Conditional Use Appeals**

None Remaining

E. **Administrative Review**

1. **A-2011-6: MILESTONE REALTY CONSULTANTS, LLC** - appeals for an administrative review to determine that an existing sign should be permitted as a "tract sign" at an off-site location in a Neighborhood Business (B-1) zone, on property located at 3600 Winthrop Drive. (Council District 9)

The Staff Recommends: Disapproval, and that the decision of the Division of Building Inspection be

upheld, for the following reasons:

- a. Tract signs are permitted on a "per street frontage" basis, pursuant to Article 17-6(e)(3) of the Zoning Ordinance. In such cases, Article 17-4(l) of the Zoning Ordinance requires that signs be located and oriented to the distinct street frontage by which the sign is permitted. The subject sign, described as a tract sign by the appellant, is located over ½-mile away from the property being advertised, on street frontage that is not specific to or otherwise a distinct part of the advertised property.
- b. There are no provisions in the Zoning Ordinance for a sign of this type, whether treated as a construction sign or a tract sign, to be permitted in a B-1 zone at an off premise location. Other than some types of exempt signs, such as government signs or political signs, the only type of sign permitted on property separate from the property being advertised is an advertising sign (i.e., a billboard), which is not a sign type permitted in the B-1 zone.
- c. The Board is prohibited from permitting a sign type that is not specifically permitted in the zone in which a sign is located, pursuant to Article 17-8(a) of the Zoning Ordinance.

Representation – Ms. Rena Wiseman, attorney, was present representing Milestone Realty Consultants, a subsidiary of Ball Homes. She said the question before the Board was whether a subdivision tract sign has to be within the subdivision that is being marketed, namely, Willow Bend, or whether it must be off premises; and that this is a matter of the Board interpreting the ordinance because the staff and Building Inspection have a different interpretation than the applicant.

Ms. Wiseman directed the Board's attention to a map of the Willow Bend subdivision shown on the overhead, as well as the primary entrance off Winthrop Drive where the signage in question is located. She said this subdivision has been developing over the years and they are at the very end of this development. The last remaining lots to be marketed and built by Ball Homes were highlighted. Ms. Wiseman reiterated that the issue is whether the signage in question, which clearly is not in the Willow Bend subdivision, is permitted. She said the sign is located on an adjoining B-1 property, for which permission was secured from the landowner to have it there. A photo of the signage in question was shown. She said there was no issue with the size or content of the sign, but rather its location outside the boundaries of the subdivision. She explained that the sign was originally installed some time ago by another realtor doing business with Ball Homes, although she was unsure if it was properly permitted; and how a complaint from Building Inspection about the sign prompted this administrative appeal.

Referring to the photo, Mr. Griggs commented that the arrow on the sign appeared to be pointing down Winthrop; and although the sign was facing Winthrop, it was designed to be read from Man o' War. For clarification, he asked which street the sign actually was facing. Ms. Wiseman said it was a matter of interpretation, but they thought the sign was oriented toward Winthrop. She concurred with Mr. Griggs that these kinds of signs, including the one at issue, are designed to direct people who are looking for new homes to the location of a particular subdivision.

Continuing, Ms. Wiseman called attention to the Ordinance's definition of a tract sign, which was shown on the overhead and read as follows: "A temporary sign advertising the original sale of property in a subdivision." She stated that this clearly is what the sign in question does; and that it is temporary in the sense that you're allowed to have the signage as long as there are sales activities going on in the subdivision. She noted a provision in the Ordinance that says this sign must be removed within 10 days after all sales activities cease; and that they are still actively marketing the Willow Bend subdivision. She then said that tract signs are permitted in all zones; and that construction signs and real estate signs are comparable, but they have key differences. In point, the definition of a construction sign was shown and read as follows: "A temporary sign identifying the project name, the architect, engineer, contractor, financing company, material supplier, or others engaged in work on the construction site on which the sign is located." With regard to a real estate sign, Ms. Wiseman said it is defined as "a temporary sign indicating only sale or rental of property or buildings on which the sign is erected."

Ms. Moore asked about the number of tract signs that a subdivision is permitted to have. Ms. Wiseman responded that each subdivision is permitted to have one tract sign per arterial or collector street frontage, not to exceed four signs. However, she noted that there is no provision in the Ordinance that says whether a tract sign has to be within the subdivision it is advertising or off site, although it was Building Inspection's position that the language in Article 17-4(l) applies in this instance. It requires that signs be located and oriented to the distinct street frontage by which the sign is permitted.

Ms. Wiseman stated that there is a point where Winthrop Drive is contiguous to the right-of-way of Man o' War, as the map shown on the overhead illustrated. She said Winthrop is the main road going into the subdivision which is developed on both sides of it. She further stated that Willow Bend fronts on Winthrop, a collector; and the sign in question is oriented to Winthrop Drive. Therefore, it was her position that Article 17-4(l) does not apply if you're trying to determine if tract signs are required to be in the subdivision or out of the subdivision, but rather to the orientation of the sign. Ms. Wiseman made the following points about the signage in question:

- This is a tract sign because it advertises the sale of lots in the subdivision.
- Tract signs are permitted in all zones.
- The subdivision fronts on a collector, namely Winthrop. Therefore it is permitted at least one tract sign.
- There is no specific provision in the Ordinance which says that the sign must be on a lot within the subdivision.

Ms. Wiseman went on to say that you have to strictly construe a zoning ordinance that affects property rights; and that you can't imply restrictions that aren't there. She cited examples in the community of tract signs that are not located in the subdivision being advertised, which is a common practice, including subdivisions off Leestown, Greendale and Spurr Roads, photos of which were shown. In closing, she reiterated that the purpose of a tract sign is to direct prospective buyers from major roadways to the new subdivision; and that it would defeat the purpose of the sign if it was located in the new subdivision. Findings for approval were submitted for the Board's consideration.

Mr. Griggs commented that he felt the signage in question was a tract sign based on its content. He asked if Building Inspection still maintained that this is a construction sign. Mr. George Dillon responded that Greg Walker received a complaint and determined that it was a construction sign. He said they really didn't know what to consider the sign; but basically, it is an off premise sign which is Building Inspection's primary issue with it. He said a tract sign is simply what it implies and should be on a tract of property for sale or being advertised. Mr. Dillon stated that Willow Bend subdivision starts .7 of a mile off Man o' War and that is where the sign should be located. Referring to the examples shown of similar signs, Mr. Griggs then asked why those signs were not being questioned. Mr. Dillon replied that they just happened to get a complaint about this particular sign; and they address these issues on a complaint basis.

Chairman Stout said that he understood the staff recommendation, but he said that this sign had been erected for over a year, and he knew of others around town. He did not estimate that this sign was of any harm. He said that sign appeals were common, but that it didn't make sense to have this proposed sign removed.

Mr. Glover asked about Article 17-4(l), and questioned the orientation of this sign to Winthrop Drive. He thought that the terms "located" and "oriented" were significant in this section, and that this seemed to permit the sign in question. Mr. Dillon responded that Building Inspection had always interpreted that these signs were to be located on the same property as the subdivision they advertise.

Mr. Marx said that the word "distinct" is also significant in this section. He opined that this interpretation of the Board may also apply to other signs permitted on a "per street frontage basis." Ms. Moore asked if those other signs also have language requiring the sign to be "on the property." Mr. Marx replied that he did not believe that they do, but that this could have some far reaching implications around town.

Mr. Glover asked if the staff report contained all of language of Article 17-4(l). Mr. Marx replied in the affirmative.

Ms. Moore asked if there were other signs that this appeal would effect. Mr. Marx responded that the staff would find some other examples in the Ordinance. Ms. Wiseman disagreed, saying that this appeal would not have far reaching effects, and would only apply to tract signs in the community. She said that their appeal only applied to tract signs, and that one could not argue that the Board's decision in their favor would also carry forward to business signs. Ms. Moore said that she thought that the Board's interpretation could also affect the location and orientation of other freestanding signs.

Mr. Griggs said that the definition of a tract sign is intended to bring people to a remote subdivision, and

questioned the utility of such signs if they had to be on a corner of the development in order to erect such a sign. He didn't believe that they should be "piled on top of each other" but did believe that if it is on an arterial that directs one to the subdivision, that that would be the only way such a sign could properly function. He felt that common sense meant that the sign had to be away from the subdivision to direct persons to the subdivision.

Mr. Glover thought that the Ordinance could have said that these signs had to be on the property and "oriented to" the street frontage, but it doesn't, and that would have more clearly supported the staff recommendation in this case. Mr. Marx replied that the Ordinance can be interpreted to mean "oriented to" in the way it currently is drafted. He displayed on the overhead a listing of free-standing signs possible in a B-1 zone.

Mr. Griggs felt like a tract sign is unlike any other in the Ordinance, but hoped that the staff could help revise the findings the Board is considering, to eliminate any unintended consequences that might result from this appeal. Ms. Boland suggested a short recess in order to review the findings with the staff, and review those provided by Ms. Wiseman.

NOTE: The Chair declared a recess at 2:33 PM. He reconvened the meeting at 2:40 PM with all members in attendance.

Ms. Boland displayed the following findings for approval on the overhead projector:

FINDINGS FOR APPROVAL OF
A-2011-6: MILESTONE REALTY CONSULTANTS, LLC

1. The sign in question meets the definition of a "tract sign" as set forth in Section 17-3(b)(20) because it advertises the sale of new and model homes in the Willow Bend subdivision and includes the name and contact information of the real estate company.
2. Willow Bend Subdivision has over 100 new lots and homes which are being actively marketed. The tract sign is approximately 48 square feet in area and complies with Section 17-6(e).
3. Willow Bend Subdivision has frontage along Winthrop Drive, a collector street, and the tract sign is oriented to Winthrop consistent with Section 17-6(e), along the street frontage which authorizes this tract sign.
4. There is no specific requirement in the Zoning Ordinance, either in the definition set forth at Section 17-3(b) or the requirements at Section 17-6(e), that a tract sign be located on the same property which it advertises. In contrast, construction signs, business signs and real estate signs **specifically** provide by **definition** that such signs be located on the property where the business is located or under construction or being sold.

Chairman Stout asked the staff to read proposed finding #4, and Mr. Sallee did so. Ms. Wiseman indicated that she concurred with the proposed findings.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Glover and carried unanimously (Meyer absent) to approve **A-2011-6: MILESTONE REALTY CONSULTANTS, LLC** (an appeal for an administrative review to determine that an existing sign should be permitted as a "tract sign" at an off-site location in a Neighborhood Business (B-1) zone) on property located at 3600 Winthrop Drive for the four findings provided by counsel and displayed on the overhead projector.

IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time.

- A. **Election of Officers** – A motion was made by Mr. Stumbo to elect Mr. Stout as Chair, Ms. Moore as Vice-Chair and Mr. Griggs as Secretary for the Board. Ms. White seconded the motion, and the motion carried unanimously (Meyer absent).
- B. **Delegation of Secretarial Duties** – A motion was made by Mr. Stumbo, seconded by Ms. White, and carried unanimously (Meyer absent) to delegate the secretarial duties to the Planning Manager or to the staff member so appointed.

- C. Possible By-law Revision – The Chairman announced that the Board would consider this item at this time.

Discussion – Mr. Griggs asked Ms. Boland about the Planning Commission and Council Meeting time limitations that were in effect. Ms. Boland replied that every Board or Commission with which she had worked had time limits, and that even employee termination proceedings have a 45-minute limit. She suggested that it is important that a provision be established to allow appellants to petition for a longer time period than the limit, once such a limit is set. Ms. Boland stated that only rarely had a violation of “due process” ever resulted from time limitations imposed by an agency. She suggested that each side in a case be limited to 45 minutes each, which would be fair to all parties involved.

Chairman Stout asked Ms. Boland if the Chair could determine that, prior to the beginning of a case, whether a presentation could be reduced from a set time limit. Ms. Boland replied that the current rules already allow the Chair to limit and prohibit repetitious testimony. Chairman Stout asked Ms. Boland about “due process” concerns from limiting presenters’ time for speaking. She suggested that 45 minutes should be adequate for most presenters, unless written requests were to be made in advance of BOA meetings.

Ms. White asked Ms. Boland about a 3-minute time limit for citizens appearing at these types of meetings. Ms. Boland replied that this was the time limit for items at Urban County Council meetings.

Chairman Stout asked Ms. Boland if a 45-minute time limit, with the ability to grant additional time if so requested, would be appropriate. She replied affirmatively, provided everyone is allowed a minimum of three minutes each. Ms. White asked whether citizens could request more than three minutes each for their testimony. Ms. Boland replied that she had not seen such a provision in a By-law, but that a relaxation of the time limit could be so requested.

Mr. Stumbo asked Ms. Boland how the time was controlled at these meetings. She replied that there is a timer control on the digital clock in the Council Chambers.

Mr. Griggs commented that in only a few occasions was this likely to occur, but was concerned as to how the public would be informed about any time limits, in advance of the Board’s meeting. He said that that this only rarely comes up at a Planning Commission meeting. He was concerned that the public should be made aware of such a change. Chairman Stout asked if the notice letters could inform the public of time limits. Ms. Boland commented that an additional sentence in the notification letters could easily accomplish this necessary public notice. Ms. Boland commented that time limits are usually applicable only in the more contentious types of public hearings.

Chairman Stout commented that the sounding of the agenda would be the proper time to remind the public of time limits. Mr. Saltee commented that the staff could place that information on the Board’s meeting agendas. Ms. Boland said that provisions for written requests for additional time could be covered in any applicable By-law amendments. Mr. Saltee commented that the Planning Commission requires such written requests to be made 48 hours in advance of any scheduled public hearing.

Mr. Glover asked about the difficulty of a determination of the “reasonable time” for a complex case. He thought it would be helpful to consider guidelines instead of rules for these, and to be flexible allowing citizens extra time. Chairman Stout agreed with Mr. Glover’s comments.

Mr. Griggs commented about the experiences of former BOA member Mike Owens, now a Planning Commission member, who told him there was a greater time allowed for organized opposition, rather than just three minutes per person. Ms. Boland commented about organized objectors and that neighborhood attorneys or representatives are routinely given more time at the Planning Commission. This is not just for attorneys, but also for Neighborhood Association presidents or leaders. Mr. Griggs asked Ms. Boland about a past BOA case, Embrace Church, where objectors had articulate arguments but did not have organized opposition, that totaled at least 30 minutes. He thought that these objectors needed more than three minutes each.

Mr. Glover thought that these time limits should be in the form of guidelines that are controlled by the Chair. He asked Ms. Boland about allowable differences for neighbors represented by legal counsel, and corporations. She replied that a sense of fairness was needed, regardless of the number of objectors present for each case.

Ms. White asked about the possibility of allowing greater time limits for neighborhood spokespersons. Mr. Glover said that corporations must be represented by legal counsel. Ms. White said that opponents could be

represented by a spokesperson, rather than by an attorney, and thus allotted a 45-minute presentation. Ms. Boland said that there also has to be consideration given to the size of the group present at the hearing, and the number of spokespersons present.

Ms. Moore commented that 45- minute time limits for applicants and organized opposition, with 3-minute citizen comments, were appropriate from her perspective. Ms. Boland agreed, and said that these are flexible.

Mr. Glover commented that the Board does not want to encourage 45-minute presentations, or to encourage folks to fill the time, if their presentation would ordinarily take less time. Mr. Stumbo asked if the By-law could establish "up to" a 45-minute time limit for these cases. Ms. Boland said that they could do so, and that there has not been this type of time stretching witnessed locally, thus far.

Ms. Moore commented that the Planning Commission established 30-minute time limits. She asked if that would be a better standard to consider. Ms. Boland agreed. Mr. Stumbo asked Ms. Boland if she could work with staff to establish a draft of guidelines for Board consideration on these limits, as he thought that some type of guidelines were necessary.

Mr. Glover asked if these time limits are needed in the Board's By-laws or if they should they appear somewhere else. Ms. Boland replied that the By-laws were where the Planning Commission established their time limits, and she that that was a good model to follow, since those would be in an official document. Ms. Moore commented that these time limits should also appear in the Board's hearing procedures provided at meetings. Ms. Boland concurred.

Mr. Griggs asked Ms. Boland to address the future notification to the public of the time limits, and the procedures necessary for citizens to request additional time. She replied that the request for additional time might suggest to the Board that a special meeting be scheduled instead, to allow sufficient time to address a given case. Mr. Glover stated that he liked the existing By-law allowing the Chair to call a special meeting, if necessary, rather than allowing applicants to request them.

Mr. Griggs said that citizens who choose to appeal a decision of the Board do so based upon the record of the meeting, and that no additional testimony is made to the Court as part of those appeals. Ms. Boland concurred, and said that the Board's notification language could be drafted to inform the public about the importance of getting all the pertinent information to the Board at their meetings, short of providing legal advice about how to present a case to the Board. Mr. Griggs asked Ms. Boland about the similarities and differences between BOA cases and zone change requests. She replied that most zone change decisions by the Commission are not followed by another public hearing at the Council. In some other cases, a majority vote of the Council is needed to overturn the Commission's recommendations. Thus, she felt that the Commission's hearings were very important.

Mr. Griggs asked Ms. Boland about the inequity of 45-minute limits for organized opposition versus 3-minute time limits for non-organized opponents. He said that he was not comfortable with that discrepancy. She replied that she would look at that in drafting this item.

Mr. Glover asked about the existing section describing the allowable amendment of the By-laws and about the "Rules of Procedure" mentioned therein. Ms. Boland and Mr. Sallee said they were not aware of these separate "rules," and were not sure of their meaning in the By-laws.

- V. **STAFF ITEMS** – The Chair announced that any items a Staff member wished to present would be heard at this time.
 - A. **House Bill 55 Training Opportunity** – Mr. Marx stated that there would be an APA audio-conference held in the Division of Planning Conference Room on Wednesday, March 16, 2011, beginning at 4:00 p.m. The title of this conference is "Mitigating Hazards Through Planning" and will count toward 1.5 hours of House Bill 55 training credit for Board of Adjustment and Planning Commission members, as well as staff.
- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be March 25, 2011.
- VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 3:15 p.m.

Louis Stout, Chairman

James Griggs, Secretary